

appear in § 7.15. This definition specially excludes the Surface Transportation Board, which has its own FOIA regulations (49 CFR Part 1001):

- (1) United States Coast Guard,
- (2) Federal Aviation Administration,
- (3) Federal Highway Administration,
- (4) Federal Railroad Administration,
- (5) National Highway Traffic Safety Administration,
- (6) Federal Transit Administration,
- (7) Saint Lawrence Seaway Development Corporation,
- (8) Maritime Administration,
- (9) Research and Special Programs Administration, and
- (10) Bureau of Transportation Statistics.

Primary Electronic Access Facility means the electronic docket facility in the DOT Headquarters Building, 400 7th Street, S.W., Washington, D.C. 20590.

Reading room records are those records required to be made available to the public under 5 U.S.C. 552(a)(2) as described in § 7.5 of Subpart B of this part. These records are made available through DOT's Primary Electronic Access Facility. Other records may also be made available at DOT's discretion at DOT inspection facilities, including DOT's Primary Electronic Access Facility.

Record includes any writing, drawing, map, recording, tape, film, photograph, or other documentary material by which information is preserved. The term also includes any such documentary material stored by computer.

Responsible DOT official means the head of the DOT component concerned, or the General Counsel or the Inspector General, as the case may be, or the designee of any of them, authorized to take an action under this part.

Secretary means the Secretary of Transportation or any person to whom the Secretary has delegated authority in the matter concerned.

Subpart B—Information Required To Be Made Public by DOT

§ 7.3 Publication in the Federal Register.

This section implements 5 U.S.C. 552(a)(1), and prescribes rules governing publication in the FEDERAL REGISTER of the following:

(a) Descriptions of DOT's organization, including its DOT components and the established places at which, the officers from whom, and the methods by which, the public may secure information and make submittals or obtain decisions;

(b) Statements of the general course and methods by which DOT's functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(d) Substantive rules of general applicability adopted as authorized by law and statements of general policy or interpretations of general applicability formulated and adopted by DOT; and

(e) Each amendment, revision, or repeal of any material listed in paragraphs (a) through (d) of this section.

§ 7.4 Publication required.

(a) *General.* The material described in § 7.3 will be published in the FEDERAL REGISTER. For the purposes of this paragraph, material that will reasonably be available to the class of persons affected by it will be considered to be published in the FEDERAL REGISTER if it has been incorporated by reference with the approval of the Director of the Federal Register.

(b) *Effect of nonpublication.* Except to the extent that he/she has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, any procedure or matter required to be published in the FEDERAL REGISTER, but not so published.

§ 7.5 Availability of opinions, orders, staff manuals, statements of policy, and interpretations and indices.

(a) This section implements 5 U.S.C. 552(a)(2). It prescribes the rules governing the availability for public inspection and copying of the following reading room materials:

(1) Any final opinion (including a concurring or dissenting opinion) or order made in the adjudication of a case.

§ 7.6

(2) Any policy or interpretation that has been adopted under DOT authority, including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation.

(3) Any administrative staff manual or instruction to staff that affects any member of the public, including the prescribing of any standard, procedure, or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public. However, this does not include staff manuals or instructions to staff concerning internal operating rules, practices, guidelines, and procedures for DOT inspectors, investigators, law enforcement officers, examiners, auditors, and negotiators and other information developed predominantly for internal use, the release of which could significantly risk circumvention of agency regulations or statutes.

(4) Copies of all records, regardless of form or format, that have been released to any person under subpart C of this part and which, because of the nature of their subject matter, a DOT component determines have become or are likely to become the subject of subsequent requests for substantially the same records.

(5) A general index of the records listed in this paragraph.

(b) Any material listed in paragraph (a) of this section that is not made available for public inspection and copying, or that is not indexed as required by § 7.7, may not be cited, relied on, or used as precedent by DOT to affect any member of the public adversely unless the person to whose detriment it is relied on, used, or cited has had actual timely notice of the material.

(c) This section does not apply to material that is published in the FEDERAL REGISTER or covered by subpart C of this part.

49 CFR Subtitle A (10-1-01 Edition)

§ 7.6 Deletion of identifying detail.

Whenever it is determined to be necessary to prevent a clearly unwarranted invasion of personal privacy, identifying details will be deleted from any record covered by this subpart that is published or made available for inspection. Whenever it is determined to be necessary to prevent the disclosure of information required or authorized to be withheld by another Federal statute, such information shall be deleted from any record covered by this subpart that is published or made available for inspection. A full explanation of the justification for the deletion will accompany the record published or made available for inspection.

§ 7.7 Access to materials and indices.

(a) Except as provided in paragraph (b) of this section, material listed in § 7.5 will be made available for inspection and copying to any member of the public at DOT document inspection facilities. It has been determined that it is unnecessary and impracticable to publish the index of materials in the FEDERAL REGISTER. Information as to the kinds of materials available at each facility may be obtained from the facility or the headquarters of the DOT component of which it is a part.

(b) The material listed in § 7.5 that is published and offered for sale will be indexed, but is not required to be kept available for public inspection. Whenever practicable, however, it will be made available for public inspection at the appropriate DOT reading room.

(c) Each DOT component will also make the reading room records identified in section 7.5(a) that are created by DOT on or after November 1, 1996, available electronically. This includes indices of its reading room records as required by law after December 1, 1999.

§ 7.8 Copies

Copies of any material covered by this subpart that is not published and offered for sale may be ordered, upon payment of the appropriate fee, from the Docket Offices listed in § 7.10. Copies will be certified upon request and payment of the fee prescribed in § 7.43(f).